

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6816

ROBERT L. MITCHELL, a/k/a Robert Lee Mitchell, a/k/a Robert Mitchell,

Petitioner - Appellant,

v.

WARDEN OF BROAD RIVER CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

BILL BYARS, Director SC Dept of Corrections,

Respondent.

Appeal from the United States District Court for the District of South Carolina, at Florence. Cameron McGowan Currie, District Judge. (4:13-cv-00470-CMC)

Submitted: July 25, 2013

Decided: September 10, 2013

Before GREGORY, DAVIS, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert L. Mitchell, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert L. Mitchell seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as successive his 28 U.S.C. § 2254 (2006) petition. We previously denied Mitchell a certificate of appealability and dismissed his appeal on the basis that he waived appellate review of the district court's order by failing to file objections to the magistrate judge's recommendation. Mitchell has now filed a petition for panel rehearing and rehearing en banc. Upon review of the petition, we grant panel rehearing, deny a certificate of appealability, and dismiss the appeal.

The district court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the

dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Mitchell has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED